

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14507 of 2021**

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RAJNIKANT MOTIBHAI PATEL

Versus

AHMEDABAD MUNICIPAL CORPORATION

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Appearance:

NAMAN H KINKHABWALA(8831) for the Petitioner(s) No. 1

MR HAMESH C NAIDU(5335) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 13/03/2023

CAV ORDER

1. The petitioner has approached this Court with the following main prayers :

“6(A) Be pleased to issue appropriate writ, order or directions and be pleased to quash and set aside the dismissal order dated 31.03.2001 and be pleased to direct the respondents to pay arrears of salary w.e.f. 12.03.1997 till 31.07.2001 and thereby be pleased to direct the respondents to pay all other consequential benefits arising out of the same with 18%.

(B) Be pleased to issue appropriate writ, order or direction and be pleased to direct the respondents to released all the allowances as well as suspension benefits and increments of the petitioner with interest @ 18% and pleased to direct the respondent authorities to regularize the suspension period of the petitioner and to direct the respondents to pay arrears of salary for suspension period i.e. 12.03.1997 to 31.07.2001 and for the entire service period i.e. from 12.03.1997 till date of

superannuation i.e. 31.07.2017 along with all other consequential benefits with 18% interest.

(C) Be pleased to issue appropriate writ, order or directions and be pleased to quash and set aside the order / communication dated 17.09.2020 to the extent that the same does not provide for granting of arrears of salary for the period of between 31.07.2001 to 31.07.2017 and does not provide for grant of salary for the period between 12.03.1997 to 31.07.2001 (suspension period).

(D) Pending admission, hearing and final disposal of this petition, the respondents may be directed to immediately pay the increments and difference of salary w.e.f. 12.03.1997 till date of superannuation i.e. 31.07.2017 to the petitioner;”

2.1 Learned advocate Mr.Naman H. Kinkhabwala for the petitioner has submitted that the petitioner was appointed as Sanitary Inspector by the respondent – Corporation. Pursuant to the allegations under the Prevention of Corruption Act, he was put under suspension in the year 1997 by the Corporation. Later on, the petitioner was tried and convicted by the competent Criminal Court vide judgment and order. Immediately after conviction by the Criminal Court, he was dismissed from service by the Corporation in the year 2001. The petitioner approached the Appellate Court, wherein he was acquitted. In the meantime, the petitioner has attained the age of superannuation. On getting acquittal

in the criminal case, the petitioner has requested the Corporation to grant all the benefits of his service till the date of superannuation, which was denied by the Corporation and granted notional benefits. Therefore, the petitioner is before this Court by way of these petitions.

2.2 Learned advocate for the petitioner has submitted that neither departmental inquiry has been initiated nor even notice or memo or charge-sheet was issued against the petitioner by the respondent Corporation.

2.3 He has also submitted that the respondent Corporation cannot withhold gratuity of the petitioner after the petitioner is superannuated.

2.4 He has further submitted that the petitioner's incentive, which was due and payable and even admitted by the Head Office and which was to be released in the year 2017, has not been released by the respondent Corporation. However, he has submitted that now only prayer pertains to the benefits for suspension period would survive and other prayers would not be survived.

2.5 In support of his submissions, learned advocate for the petitioner has relied upon the decision of this Court in the case of *Sureshchandra Lalbhai Patel versus Municipal Commissioner, AMC – Special Civil Application No.10548 of*

2011 and other allied matters dated 03.03.2017 and has submitted that the case of the petitioner may be considered on this line. He has submitted that this petition may be allowed.

3.1 *Per contra*, learned advocate Mr. Hamesh Naidu for the respondents - Corporation has submitted that the petitioner is granted notional benefits by the Corporation and accordingly paid all the benefits to the petitioner. He has submitted that the petitioner has accepted the said payment without raising any objection or protest at that relevant time.

3.2 He has also submitted that the petitioner was prosecuted by criminal trial for the offence of corruption and he was not entitled for back wages for the period between termination and superannuation when he never worked.

3.3 He has further submitted that after conviction, the petitioner came to be dismissed from service in accordance with the rules and regulations of the respondent Corporation. He has further submitted that the petitioner was acquitted by the Appellate Court on giving benefit of doubt to the petitioner. He has submitted that therefore, there is no clear acquittal by the petitioner from the charges levelled against him under the Prevention of Corruption Act.

3.4 He has further submitted that after acquittal,

though not clear acquittal, the petitioner was granted continuity for the entire tenure of the service including the period during which he was terminated for extending notional benefits including pension and gratuity. He has also submitted that benefits towards group insurance, leave encashment as well as GPF were granted to the petitioner. He has submitted that all the dues were computed and paid to the petitioner.

3.5 Further, he has submitted that all the notional benefits and the benefits which an individual would have earned over a period of time if he would be in service, were taken into consideration and based on which salary was derived and benefits were granted.

3.6 He has vehemently submitted that during the entire period when services of the petitioner were terminated and till the date of superannuation, he has never worked and hence, on the basis of 'no work, no pay', the petitioner was not entitled for the wages as claimed for.

3.7 He has submitted that the petitioner was dismissed after the order of conviction was passed by the competent Criminal Court, and after order of acquittal, though not clear acquittal, the petitioner was given all benefits notionally, which can be extended to an employees,

which are accepted by the petitioner without protest.

3.8 He has submitted that the petitioner has never worked during the said period and hence, would not be eligible for wages or promotions and increments as being claimed and the respondent is not at fault for not paying wages as he was out of service because of his own conduct.

3.9 In support of his submissions, he has relied upon the decision of this Court in the case of *Meenaben Kantilal Shrimali, Wd/o. Kantilal Vashrambhai Shrimali versus Ahmedabad Municipal Corporation – Special Civil Application No.12740 of 2016, dated 31.07.2018* and has submitted that facts of the present case is squarely covered by this decision. He has submitted that the employee who had not worked for the said particular period would not be entitled to and the employer who was unable to take work for the said period, would not be saddled with the payment of the salary in form of back wages for the said period. Further, he has submitted that for an employee, who was terminated from services on account of criminal prosecution, would not be able to claim back wages automatically and as a matter of course on the ground that he was subsequently acquitted. He has submitted that this petition may be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this

Court finds as under :

4.1 While working as Sanitary Inspector, an FIR came to be lodged against the petitioner under the Prevention of Corruption Act as he has demanded illegal gratification for not demolishing the illegal construction on 13.01.1997.

4.2 The petitioner was put under suspension on 12.03.1997.

4.3 The petitioner was tried and convicted by the competent Criminal Court vide judgment and order dated 27.11.2000.

4.4 The petitioner came to be dismissed from service by the respondent Corporation on 31.07.2001.

4.5 The petitioner has attained the age of superannuation on 31.07.2017.

4.6 The petitioner preferred an appeal against the conviction order before the Appellate Court, wherein he was declared acquittal by giving benefit of doubt vide judgment and order dated 27.06.2018.

4.7 The period from 12.03.1997 to 31.07.2001 (suspension period) and the period from 31.07.2001 to 31.07.2017 (dismissal period) is counted as continuous - on

duty period by the respondent Corporation and accordingly, counted as notional for the purpose of granting benefits to the petitioner.

4.8 Accordingly, the respondent Corporation has paid all the benefits notionally i.e. pension, gratuity, leave encashment etc., keeping in mind the principle that 'no work, no pay'. All the benefits have been accepted by the petitioner without any protest or objection.

5.1 An identical issue, which is akin to one on hand, has been cropped up before this Court where the question was for consideration about entitlement of back wages to the petitioner, who was subjected to prosecution under the Prevention of Corruption Act, 1988, and who having been convicted by the trial Court, came to be acquitted in the appeal, and that departmental inquiry was not initiated against him and upon acquittal, he was given all the benefits, including the notional benefits for the interregnum between termination and superannuation, but the back wages was not given to him.

5.2 This Court has, in case of *Meenaben Kantilal Shrimali Wd/o. Kantilal Vashrambhai Shrimali versus Ahmedabad Municipal Corporation – Special Civil Application No.12740 of 2016 dated 31.07.2018*, after taking into

consideration the various decisions of the Hon'ble Apex Court, has observed and held in paragraphs 5.1 to 7, which are as under :

“ 5.1 In Union of India v. Jaipal Singh [2003 Law Suit (SC) 1066] the facts were similar as the respondent was faced with criminal case. The Court held that in respect of the period after the conviction was suffered by the respondent, when he was out of service, the appellant – employer could not be made liable to pay during the said period for which the services of the employee was not availed. The Court observed and held thus,

“... .. we are in respectful agreement with the view taken in 1996 (11) SCC 603. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondents for the period he was not in service. The appellants cannot be made liable to pay for the

period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages aspects and considerations.”

5.2 In another decision in Banshi Dhar v. State of Rajasthan [(2007) 1 SCC 374], the Apex Court observed with reference to the facts of that case that it may be true that reason for long pendency of trial or the criminal appeal filed by the accused - employee may not be attributed to his acts of omission and commission, but the fact remains that the period between 31st July, 1976 when he was terminated and the date when he reached the superannuation, he did not work. The facts of that case are akin to one on hand. Once the employee was convicted, thereafter upon his acquittal he was reinstated and directed to be paid his pensionary benefits. The continuity of service was not denied but the question was whether the back wages should have been granted to him.

5.2.1 The Supreme Court held thus,

“Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity

Board, Himmatnagar (Gujarat) [(1996) 11 SCC 603]. We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension.” (Para 11)

5.3 Referring to the decision in *Capt. M. Paul Anthony (supra)* relied on by learned advocate for the petitioner, the Supreme Court held that the basic principle was that the proceedings in a criminal case and the proceedings in departmental inquiry can go simultaneously except where the departmental proceedings and the criminal case are based on same set of facts. It was sought to be pointed out that in *thta* case the Supreme Court directed reinstatement of the appellant on the post of Security Officer with entire arrears of salary together with allowances. Decision in *G.M. Tank (supra)* of the Apex Court laid down that if the employee was acquitted in the criminal trial honourably, a contrary finding recorded in the departmental proceedings would be unjust and oppressive. A dismissal order held not sustainable. In that case also, the petitioner was prosecuted under the Prevention of Corruption Act. The Supreme Court set aside the order of dismissal, but without back wages. While the said directions were issued by the Apex Court in light of the facts attendant to the said controversy, decisions in *Jaipal Singh (supra)* and *Banshi Dhar (supra)* involved facts which were nearer to the facts of the present case to apply the principle of denial of back wages. The decisions in *Jaipal Singh (supra)* and *Banshi Dhar (supra)* were the decisions subsequent in point of time emanating the mandate.

6. *The position of law emerges from the aforesaid decisions is that an employee who is criminally prosecuted but gets subsequently acquitted, would not be entitled to claim the back wages as a matter of right during the period from the date of his termination when his services were dispensed with in view of conviction and who retired after having subsequently secured acquittal from the appellate court. The employer could justifiably treat the period from the date of termination till the date of retirement of such employee, as a period sans back wages. While it is well settled that grant of back wages is never an automatic relief to follow, the theory of no-work-no-pay would apply.*

6.1 *The employee who had not worked for the said particular period would not be entitled to, and the employer who was unable to take work for the said period, would not be saddled with the payment of the salary in form of back wages for the said part. For deciding the question of granting or otherwise of the back wages, host of the factors would govern. One of the weighty factors for not granting the back wages would be that the employee had not worked for the period concerned. For an employee who was terminated from services on account of criminal prosecution, would not be able to claim back wages automatically and as a matter of course on the ground that he was subsequently acquitted.*

7. *Therefore, no case is made out to grant any relief to the petitioner. The petition is dismissed. Notice is discharged.”*

6. In view of above and in view of peculiar facts of the present case, it is well settled that grant of back wages

is never an automatic relief to follow, the theory of 'no work, no pay' would apply. Further, for an employee, who was terminated from services on account of criminal prosecution, would not be able to claim back wages automatically and as a matter of course, on the ground that he was subsequently acquitted. The respondent Corporation has paid all the benefits notionally, which was accepted by the petitioner without any protest or objection. Taking the said ratio into consideration, any benefit, which is still required to be given to the petitioner notionally, should be given immediately by the respondent Corporation.

7. In view of above, the following order is passed.

7.1 This petition is disposed of accordingly.

7.2 The respondent Corporation shall pay the remaining benefits, if any, to the petitioner, keeping the above ratio in mind and calculating the same notionally, within a period of four weeks from today, in accordance with rules of the Corporation.

7.3 It is clarified that this Court has not interfered in the payments which were made by the Corporation to the petitioner.

M.H. DAVE

(SANDEEP N. BHATT,J)